

# UNITED STATES DISTRICT COURT

for the  
Eastern District of New York

JOHN DARWIN LEON HERAS

*Petitioner*

v.

WARDEN, MDC BROOKLYN

*Respondent*

(name of warden or authorized person having custody of petitioner)

Case No. 23cv5057  
(Supplied by Clerk of Court)

## PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

### Personal Information

1. (a) Your full name: Jhon Darwin Leon Heras  
(b) Other names you have used: N/A
2. Place of confinement:  
(a) Name of institution: MDC Brooklyn  
(b) Address: 80, 29th Street  
Brooklyn, NY 11232  
(c) Your identification number: 90102-509
3. Are you currently being held on orders by:  
☒ Federal authorities      ☐ State authorities      ☐ Other - explain:  
\_\_\_\_\_
4. Are you currently:  
☐ A pretrial detainee (waiting for trial on criminal charges)  
☐ Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime  
If you are currently serving a sentence, provide:  
(a) Name and location of court that sentenced you: \_\_\_\_\_  
(b) Docket number of criminal case: \_\_\_\_\_  
(c) Date of sentencing: \_\_\_\_\_  
☐ Being held on an immigration charge  
☒ Other (explain): Being held on an extradition request from the Republic of Ecuador  
\_\_\_\_\_  
\_\_\_\_\_

### Decision or Action You Are Challenging

5. What are you challenging in this petition:  
☐ How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)

- ☐ Pretrial detention
- ☐ Immigration detention
- ☐ Detainer
- ☐ The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)
- ☐ Disciplinary proceedings
- ☒ Other (explain): Certification and Committal for Extradition issued by U.S.M.J. Taryn A. Merkl on 6/27/23

6. Provide more information about the decision or action you are challenging:
- (a) Name and location of the agency or court: U.S. District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, NY 11201
- (b) Docket number, case number, or opinion number: 22-MJ-271 (TAM)
- (c) Decision or action you are challenging (for disciplinary proceedings, specify the penalties imposed):  
Certification and Committal for Extradition (ECF Doc. 34), accompanying Memorandum and Order (ECF Doc. 33) and all underlying proceedings leading up thereto
- (d) Date of the decision or action: 06/27/2023

### Your Earlier Challenges of the Decision or Action

7. **First appeal**

Did you appeal the decision, file a grievance, or seek an administrative remedy?

☐ Yes ☒ No

(a) If “Yes,” provide:

(1) Name of the authority, agency, or court: \_\_\_\_\_

(2) Date of filing: \_\_\_\_\_

(3) Docket number, case number, or opinion number: \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_

(b) If you answered “No,” explain why you did not appeal: No direct appeal lies from a certificate of extraditability

8. **Second appeal**

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

☐ Yes ☒ No

(a) If “Yes,” provide:

(1) Name of the authority, agency, or court: \_\_\_\_\_

(2) Date of filing: \_\_\_\_\_

(3) Docket number, case number, or opinion number: \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_

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(b) If you answered “No,” explain why you did not file a second appeal: No such appeal is available

\_\_\_\_\_

\_\_\_\_\_

9. **Third appeal**

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

☐ Yes

☒ No

(a) If “Yes,” provide:

(1) Name of the authority, agency, or court: \_\_\_\_\_

(2) Date of filing: \_\_\_\_\_

(3) Docket number, case number, or opinion number: \_\_\_\_\_

(4) Result: \_\_\_\_\_

(5) Date of result: \_\_\_\_\_

(6) Issues raised: \_\_\_\_\_

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(b) If you answered “No,” explain why you did not file a third appeal: No such appeal is available

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\_\_\_\_\_

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

☐ Yes

☒ No

If “Yes,” answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

☐ Yes

☐ No

If “Yes,” provide:

- (1) Name of court: \_\_\_\_\_
- (2) Case number: \_\_\_\_\_
- (3) Date of filing: \_\_\_\_\_
- (4) Result: \_\_\_\_\_
- (5) Date of result: \_\_\_\_\_
- (6) Issues raised: \_\_\_\_\_

- (b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

☐ Yes ☐ No

If “Yes,” provide:

- (1) Name of court: \_\_\_\_\_
- (2) Case number: \_\_\_\_\_
- (3) Date of filing: \_\_\_\_\_
- (4) Result: \_\_\_\_\_
- (5) Date of result: \_\_\_\_\_
- (6) Issues raised: \_\_\_\_\_

- (c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence: \_\_\_\_\_

# 11. **Appeals of immigration proceedings**

Does this case concern immigration proceedings?

☐ Yes ☒ No

If “Yes,” provide:

- (a) Date you were taken into immigration custody: \_\_\_\_\_
- (b) Date of the removal or reinstatement order: \_\_\_\_\_
- (c) Did you file an appeal with the Board of Immigration Appeals?

☐ Yes ☐ No

If "Yes," provide:

- (1) Date of filing: \_\_\_\_\_
- (2) Case number: \_\_\_\_\_
- (3) Result: \_\_\_\_\_
- (4) Date of result: \_\_\_\_\_
- (5) Issues raised: \_\_\_\_\_

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(d) Did you appeal the decision to the United States Court of Appeals?

☐ Yes ☐ No

If "Yes," provide:

- (1) Name of court: \_\_\_\_\_
- (2) Date of filing: \_\_\_\_\_
- (3) Case number: \_\_\_\_\_
- (4) Result: \_\_\_\_\_
- (5) Date of result: \_\_\_\_\_
- (6) Issues raised: \_\_\_\_\_

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## 12. Other appeals

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

☒ Yes ☐ No

If "Yes," provide:

- (a) Kind of petition, motion, or application: Briefing in the underlying extradition matter
- (b) Name of the authority, agency, or court: U.S. District Court for the Eastern District of New York

(c) Date of filing: Various dates (see attached docket)

(d) Docket number, case number, or opinion number: 22-MJ-271 (TAM)

(e) Result: Certificate of extraditability granted

(f) Date of result: 6/27/2023

(g) Issues raised: Bond, discovery, sufficiency of evidence, effect of prison conditions in Ecuador on extraditability, effect of prison conditions in Ecuador on opinion and/or recommendations of magistrate judge

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**Grounds for Your Challenge in This Petition**

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

**GROUND ONE:** The evidence presented by the government does not establish probable cause to find that the petitioner committed an extraditable offense under the law of Ecuador

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(a) Supporting facts (*Be brief. Do not cite cases or law.*):

For the reasons set forth in the attached extradition brief (ECF Doc. 21), which petitioner adopts and incorporates by reference herein, petitioner submits that the evidence presented by the government consisted of speculation, weak circumstantial proof, and unreliable hearsay, and was thus insufficient to establish probable cause as to each of the specifications for which the magistrate judge granted a certificate of extraditability.

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(b) Did you present Ground One in all appeals that were available to you?

☒ Yes

☐ No

**GROUND TWO:** Extreme conditions in the Ecuadorian prisons, which have been documented by the State Department, international human rights organizations, news reports, and the government of Ecuador itself, establish that extradition would amount to a death sentence for petitioner and thus warrant an exception to the non-inquiry doctrine under *Gallina v. Fraser*, 278 F.2d 77 (2d Cir. 1960) and its progeny

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(a) Supporting facts (*Be brief. Do not cite cases or law.*):

Documented prison conditions in Ecuador show that the prisons are essentially run by violent gangs, that up to 1.5% of inmates are violently killed each year, that extreme abuse amounting to torture by both inmates and guards is widespread, and that American citizens such as petitioner Leon are particularly targeted for extortion and violent abuse. This is thus one of the rare cases warranting an exception to the non-inquiry doctrine.

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Petitioner further incorporates the facts and arguments set forth in the attached submissions to the magistrate.

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(b) Did you present Ground Two in all appeals that were available to you?

☒ Yes

☐ No

**GROUND THREE:** Petitioner was denied due process in connection with the underlying extradition proceeding

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(a) Supporting facts (*Be brief. Do not cite cases or law.*):

For the reasons set forth in the attached district court filings, which petitioner adopts and incorporates by reference herein, the petitioner was denied due process by reason of not being allowed to obtain discovery of evidence that would have explained the apparent circumstantial proof adduced by the government. Because such evidence would have explained, rather than contradicted, the government's proof, it would have been admissible and discovery of such evidence should have been allowed.

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(b) Did you present Ground Three in all appeals that were available to you?

☒ Yes

☐ No

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**GROUND FOUR:** \_\_\_\_\_

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\_\_\_\_\_  
\_\_\_\_\_  
**(a) Supporting facts** (*Be brief. Do not cite cases or law.*):

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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**(b) Did you present Ground Four in all appeals that were available to you?**

☐ Yes

☐ No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not: No direct appeals are available in an extradition proceeding. All grounds raised herein were presented in detail to the extradition magistrate, which was the only proceeding available in which to present them.

**Request for Relief**

15. State exactly what you want the court to do: Vacate the Certification and Committal for Extradition and all underlying orders in the extradition proceeding, and order the release of the petitioner from custody.


**Declaration Under Penalty Of Perjury**

If you are incarcerated, on what date did you place this petition in the prison mail system:

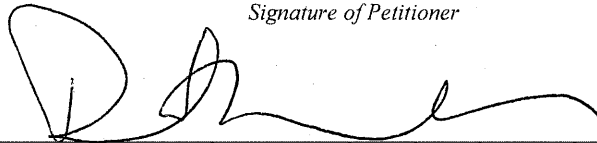
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I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date: 07/06/2023

 as Counsel

*Signature of Petitioner*



*Signature of Attorney or other authorized person, if any*